84-44

No. .....

Office - Supreme Court, U.S.
FILED
JUL 26 1984
ALEXANDER L. STEVAS
CLERK

In The
Supreme Court of the United States
October Term, 1984

JOANN SAGONA, INDIVIDUALLY AND FOR ALL OTHERS SIMILARLY SITUATED,

Petitioner,

vs.

AVCO FINANCIAL SERVICES OF LOUISIANA, INC. AND ITS PARENT NOW UNKNOWN AND THEREFORE UNNAMED,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Herschel C. Adcock
Adcock & Dupree
821 Main Street
Post Office Box 3037
Baton Rouge, Louisiana 70821
Telephone: (504) 383-5276

Attorney for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 835-7427 Ext. 333

BEST AVAILABLE COPY

TABLE OF CONTENTS

	Pages
Response	1
Conclusion	5

RULES CITED

12 CFR 226.18 (old regulation)	2
12 CFR 226.18, Comment 18(i) (new regulation)	2
12 CFR 226.8(b)(3)	4, 5

No. .....

—o—

In The

Supreme Court of the United States

October Term, 1984

—o—

JOANN SAGONA, INDIVIDUALLY AND FOR ALL OTHERS SIMILARLY SITUATED,

Petitioner,

vs.

AVCO FINANCIAL SERVICES OF LOUISIANA, INC. AND ITS PARENT NOW UNKNOWN AND THEREFORE UNNAMED,

Respondent.

—o—

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS

—o—

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

—o—

RESPONSE

A.

There is no conflict among the decision of the United States District Court for the Eastern District of Louisiana, the decision of the United States Court of Appeals for the Fifth Circuit, and

the Federal Reserve Board regulations both under the old and new Regulation Z that requires a lender to disclose the "payable on demand" feature of a credit transaction.

Sagona sets forth as the reason for granting a writ by this Honorable Court, the decision of the court below conflicts with regulations of the Federal Reserve. Sagona argues that both under the old and new Regulation Z, the Federal Reserve Board made it a required disclosure to disclose a "payable on demand" clause whether same was contained in the note or in the mortgage (12 CFR 226.18, old regulation) and Federal Reserve Board Official Staff Commentary, 12 CFR 226.18, Comment 18(i) (new regulation).

A study of the judgments provided in the appendix of Sagona's petition reveals that said judgments did not result from an interpretation of Regulation Z either old or new. The judgments were the result of an interpretation of the chattel mortgage document as opposed to an interpretation of Regulation Z. As such, there is no conflict between the Federal Reserve Board Regulation and the lower court decisions. This point is well illustrated by the following quote from the decision of the United States District Court, Eastern District of Louisiana, found in Appendix C, page A-7 of the Sagona's petition for writ of certiorari:

> "A reading of the chattel mortgage document reveals that the obligation is payable in installments becoming due on demand only in the event of default. Moreover, the mortgage document is an accessory obligation designed to secure the obligation set forth in the loan agreement. It cannot, by itself, convert the agreement between the parties to a demand loan.

Accordingly, since I find the obligation is payable in installments, disclosure pursuant to Regulation Z is not necessary."

B.

The documents signed by Sagona contained no "payment on demand" clause that required disclosure.

This matter has come before this Honorable Court as one of the last cases to be decided under the old Regulation Z. In deciding this case, the Court should consider the purpose behind both the regulation as passed in 1968 and as it has been amended. The purpose of the legislation and regulation is to enlighten the consumer, not to further confuse him.

With this in mind, let us consider Sagona's argument. The documents signed by Sagona, attached to the petition for writ of certiorari as Exhibits 1-3, provided that payment on demand is made only in the event of default. Sagona's basis for an argument that this is a demand loan is found in language in the collateral chattel mortgage which says that sum shall be paid upon demand of mortgage. What Sagona failed to do was read the entire sentence set forth in the mortgage. This sentence provides:

"Now, therefore, in order to secure the repayment of said indebtedness and the punctual payment of the said LOAN AGREEMENT and payments due thereon at maturity and any renewals or extensions thereof, of any future loans made pursuant thereto, all future advances shall be payable by the Mortgagor upon demand of the Mortgagee, but subject to the continuing approval of the Mortgagors' credit by the Mortgagee or any other obligations which said Mortgagor may owe said Mortgagee, whether due or to become due, or whether now existing or hereafter

> contracted, together with all interest, attorney's fees and insurance premiums, which said Mortgagee or subsequent holders of said note shall incur or pay in the event of non-payment of said LOAN AGREEMENT, or any of its installments, said Mortgagors agree that the hereinafter described property (see Schedule A) is and remains specially mortgaged and hypothecated in favor of the Mortgagee above named and of any and all future holders of said LOAN AGREEMENT."

This entire sentence taken in context with the mortgage clearly reveals that this mortgage secures the obligations of the debtor set forth in the loan agreement. The mortgage itself does not convert the arrangement between Sagona and Avco to a demand loan.

Even if we assume for argument's sake only, that the language Sagona refers to in the mortgage does state that the obligation is payable upon demand, the argument still lacks merit. A mortgage is merely an accessory agreement and is not the primary obligation, a point made by the District Court in making its decision. Therefore, to determine whether or not this is a demand loan in the context of 12 CFR 226.8(b)(3), one must look to the primary obligation, namely, the loan agreement. Paragraph 4 of the loan agreement clearly states:

> "I promise to pay to you or your order . . . the *total of payments and of each succeeding loan made pursuant to this agreement in consecutive monthly payments, on the dates, in the amounts, for the term and in the manner set forth* in the respective statement of loans executed in connection with said loans." (emphasis added)

In conclusion, Avco submits that the transaction before this court is not a demand loan and therefore the de-

mand loan disclosure required by 12 CFR 226.8(b)(3) is not necessary in the instant case. The only demand feature contained in this Agreement is in the event of a default by the debtor.

CONCLUSION

C.

Respondent submits that the United States District Court for the Eastern District of Louisiana and the United States Fifth Circuit Court of Appeals were correct in their interpretation of the contract involved. There is no conflict with the Federal Reserve Regulation and, as a matter of fact, the decision is completely harmonious with the regulation.

RESPECTFULLY SUBMITTED this the 25th day of July, 1984.

AVCO FINANCIAL SERVICES
OF LOUISIANA, INC.

By: HERSCHEL C. ADCOCK

HERSCHEL C. ADCOCK
ADCOCK & DUPREE
821 Main Street
Post Office Box 3037
Baton Rouge, Louisiana 70821
Telephone: (504) 383-5276